

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of

Federal-State Joint Board on  
Universal Service

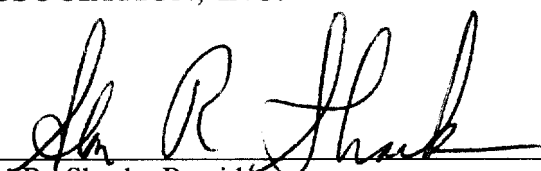
CC Docket No. 96-45

To: The Commission

RESPONSE TO PETITIONS FOR RECONSIDERATION OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

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ASSOCIATION, INC.

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August 18, 1997

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.429 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its response to Petitions for Reconsideration filed in the above-entitled proceeding.<sup>1</sup> Additionally, AMTA urges the FCC to postpone the September 1, 1997 deadline for the submission of Universal Service Worksheet, FCC Form 457, at least for Commercial Mobile Radio Service ("CMRS") and Private Mobile Radio Service ("PMRS") licensees that are classified as "telecommunications carriers" in accordance with the 1996 Telecommunications Act, and, thereby, seemingly subject at least to a federal Universal Service funding obligation.<sup>2</sup> The current lack of guidance regarding how either interconnected CMRS operators or dispatch-only PMRS telecommunications carriers are expected to identify interstate versus intrastate telecommunications services makes it impossible for parties to submit meaningful, accurate information to the FCC.

## **I. INTRODUCTION**

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") service operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. These members provide commercial wireless services throughout the nation. Some

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<sup>1</sup> Report and Order, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997) and published in the Federal Register June 17, 1997, 62 Fed. Reg. 32862 ("Universal Service Order" or "Order").

<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amended the Communications Act of 1934, 47 U.S.C. § 151 et seq. ("1996 Act").

members' systems are interconnected with the Public Switched Network ("PSN"); many provide purely dispatch service with no interconnection capability. Nonetheless, both types of systems are engaged in the provision of "telecommunications service" under the very broad definition set out in the 1996 Act and are, therefore, obligated to contribute to the federal Universal Service fund.

2. On August 4, 1997, less than thirty days prior to the filing deadline, the FCC released its Universal Service Worksheet, FCC Form 457. Despite the fact that numerous parties in this proceeding have requested guidance regarding how they are to distinguish interstate from intrastate end user revenues in a wireless environment, and have detailed the complexities and ambiguities that arise in that context, the Worksheet is silent on this issue. It does state that interstate revenue includes all revenue received for calls that do not originate and terminate in the same state, but includes no information responsive to the queries from the wireless industry regarding how to make that interstate versus intrastate determination. Worksheet at p. 15. In light of the FCC's failure to provide sufficient information to enable licensees to complete the Worksheet with any degree of accuracy or industry-wide consistency, the Association urges the FCC to postpone collection of the Worksheets.

**II. THE FCC HAS NOT PROVIDED THE NECESSARY GUIDANCE TO ENABLE THE WIRELESS INDUSTRY TO PROVIDE ACCURATE, CONSISTENT UNIVERSAL SERVICE CONTRIBUTION INFORMATION.**

3. The current status of the Universal Service obligation vis-a-vis wireless operators places them in an untenable position. The Worksheet instructions are quite specific in respect to compliance obligations and ramifications:

Contributors failing to file the Universal Service Worksheet or contributions in a timely fashion may be subject to the enforcement provisions of the

Communications Act and any other applicable law. In addition, Section 54.713 of the Commission's rules authorizes the Universal Service Administrator to bill a contributor for reasonable costs, including interest and administrative costs that are caused by inaccurate or untruthful filing of the Worksheet or overdue contributions. Worksheet at p. 6.

Yet the FCC has failed entirely to respond to repeated inquiries from the wireless industry, the answers to which are essential in enabling CMRS and PMRS licensees to submit accurate and truthful Worksheets.

4. For example, parties such as the Cellular Telecommunications Industry Association ("CTIA") and Nextel Communications, Inc. ("Nextel") have explained the extraordinary complexities in tracking the jurisdictional nature of wireless traffic, and have provided examples of a number of factual situations in which the interstate or intrastate status of a particular communication is susceptible to conflicting determinations. A call may be from a landline instrument in one state to a mobile unit based in the same state and with a common NXX code, but the unit may be in or travel into a different jurisdiction during the duration of the communication. They have noted that a call from one wireless unit to another, when both initially are located in a single jurisdiction, may be routed through a site in another state. Moreover, during the course of the call, one or both of the units may leave their common jurisdiction and move to another or even two different states, neither of which may be the state in which the call switching is performed. It may be clear to the FCC how such transmissions should be designated for interstate versus intrastate purposes, but, if so, the agency has not communicated its determinations to the industry.<sup>3</sup> The correct answer is far from apparent to

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<sup>3</sup> This assumes, of course, that service providers have access to, or could obtain access to, the information needed to track the progress of a particular transmission to this level of detail, and to record and thereby account for this movement. As a number of wireless trade

those operators now required to submit their Universal Service Worksheets under the compliance strictures specified above.

5. The interstate/intrastate conundrum becomes even more problematic in the context of the purely dispatch systems operated by many of AMTA's members. To the extent these systems provide coverage over multiple jurisdictions simply because of the location of the transmitter, there is no known way to distinguish interstate from intrastate traffic. For example, an SMR transmitter located in Rhode Island may provide coverage into Massachusetts, Connecticut and even New York. The customer units on the system may be traveling anywhere within that coverage area when using the radio system and talking to associated units at other locations throughout that area. Because much of the traffic on these systems is "group call" wherein multiple units are involved simultaneously in a single conversation, the transmission may involve some units within the same state while other units will be in different jurisdictions. Since customers typically are billed a flat, per unit monthly fee, the system operator, the "telecommunications provider", has no reason to, and his system has no ability to, identify the location of the called or calling unit(s). Again, the FCC has provided no guidance as to how such transmissions should be classified, and, therefore, how the computations required for accurate completion of the Worksheet should be completed.<sup>4</sup>

6. Licensees cannot be required to submit information to the FCC which, if

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organizations and operators have advised the FCC previously, most cannot without implementing highly complex, sophisticated and costly technical enhancements to their systems. If they are required to do so to satisfy their obligations in this proceeding, then they must be afforded at least six months to alter their methods of keeping these accounts. See 47 C.F.R. § 1.427(c).

<sup>4</sup> For these systems, reference to TRS information is not relevant since their non-interconnected status exempted them from TRS filing obligations.

incorrect, can subject them to serious civil and criminal penalties in the absence of Commission guidance on matters essential to the accuracy of the calculations called for in the filing. The FCC must postpone the September 1, 1997 filing deadline for Universal Service Worksheets until it has answered certain fundamental jurisdictional issues relating to interstate versus intrastate wireless services.

**III. THE UNIQUE JURISDICTIONAL ISSUES RELATING TO WIRELESS SERVICES SUPPORT A DETERMINATION THAT THESE SERVICES ARE INHERENTLY INTERSTATE AND SHOULD BE SUBJECT ONLY TO FEDERAL UNIVERSAL SERVICE REQUIREMENTS.**

7. The complex factual situations outlined above, as well as those detailed in other filings in this proceeding, highlight the difficulty of apportioning wireless service revenues between interstate and intrastate transmissions. As wireless systems consolidate and continue to respond to consumer demand for more ubiquitous coverage without the inconvenience of roaming, it will be increasingly difficult to distinguish meaningfully between interstate and interstate service revenue since the service provided is inherently interstate.

8. Congress recognized this fundamental aspect of wireless service in the 1993 Budget Act<sup>5</sup>, and specifically preempted state regulation of CMRS rates and entry in constructing a rational regulatory scheme conducive to the development of competitive wireless networks. 47 U.S.C. § 332. Moreover, the Budget Act specifically addressed the permissible extent of state authority in respect to Universal Service funding:

Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such state) from

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<sup>5</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI 6002(b), 107 Stat. 312 (1993)("Budget Act").

requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. 47 U.S.C. § 332(c)(3)(A).

9. It would be difficult to draft a **less** ambiguous explanation of the intent of Congress vis-a-vis the obligation of wireless providers to contribute to state Universal Service funds. It is evident that Congress intended wireless operators to become subject to those contribution obligations **only if and when** the service they provide constitutes a substitute for the local telephone service. There has been no finding that even the most successful CMRS offering has reached such a level in any, much less all, states.

10. Both CTIA and Nextel have urged the FCC to reconsider this aspect of the Universal Service Order. AMTA supports those requests. The FCC's decision to ignore the clear directive of this statutory provision, and instead to substitute its own judgment in support of the Joint Board's finding that states may require Universal Service contributions from all telecommunications service providers, is contrary to the Communications Act and must be reversed.<sup>6</sup> The FCC's understandable desire to ensure adequate Universal Service funding, a result enhanced by broadening the universe of contributors, cannot override an unequivocal Congressional mandate.

#### IV. CONCLUSION

11. AMTA urges the Commission to postpone the Universal Service Worksheet filing deadline for CMRS and PMRS licensees until the FCC has clarified the delineation between interstate and intrastate revenues for purposes of calculating Universal Service funding

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<sup>6</sup> See Order at ¶ 791. The Association assumes that the FCC made some finding to support its interpretation. However, because there is no explanation of the agency's finding in the Universal Service Order, it is not possible for AMTA to consider or refute it.

obligations. Additionally, the Association supports the requests from CTIA and Nextel that the Commission revisit its decision regarding state Universal Service funding obligations for CMRS and PMRS operators.



## CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this August 18, 1997, caused to be hand carried a copy of the foregoing Response to Petitions for Reconsideration to the following:

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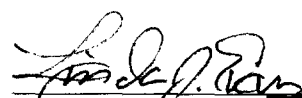
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